

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (AT DAYTON)

IN RE HUFFY CORPORATION	:	CONSOLIDATED CASE
SECURITIES LITIGATION	:	NO. 3:05-cv-0028
	:	
	:	(Judge Walter Herbert Rice)
	:	(Magistrate Judge Sharon L. Ovington)
	:	
	:	MOTION FOR LEAVE TO FILE
	:	DEFENDANTS' SUPPLEMENTAL
	:	MEMORANDUM OF RECENT
	:	AUTHORITY IN SUPPORT OF
	:	DEFENDANTS' MOTION TO
	:	DISMISS PLAINTIFFS'
	:	CONSOLIDATED CLASS ACTION
	:	COMPLAINT FOR VIOLATION OF
	:	<u>FEDERAL SECURITIES LAWS</u>

Pursuant to S.D. Ohio Local Rule 7.2(a)(2), Defendants Don R. Graber, Timothy G. Howard, Robert W. Lafferty and Paul R. D'Aloia (collectively "Defendants") move for leave to file a two-page Supplemental Memorandum of Recent Authority In Support of Defendants' Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint for Violation of Federal Securities Laws.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE DEFENDANTS'
SUPPLEMENTAL MEMORANDUM OF RECENT AUTHORITY IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED CLASS
ACTION COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS**

A supplemental memorandum of recent authority is necessary to bring to the Court's attention a recent decision from the Northern District of Ohio, Eastern Division (Youngstown). In re: Diebold Securities Litigation, Case No. 5:05CV2873, Memorandum Opinion and Order (August 22, 2008) (Economus, J.) ("Diebold Opinion"). Diebold dismissed the plaintiffs' complaint because they failed to plead scienter sufficiently. Diebold Opinion, pp. 7, 20. The Court analyzed the case under the Helwig v. Vencor, Inc., 251 F.3d 540, 565 (6th Cir. 2001), factors and found the allegations to be insufficient to support a strong inference of scienter. Diebold Opinion, pp. 15-20. The Court also held that the magnitude of the fraud is not a factor that supports an inference of scienter. Diebold Opinion, p. 19. A copy of Defendants' Supplemental Memorandum of Recent Authority in Support of Defendants' Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint for Violation of Federal Securities Laws is attached as Exhibit 1. A copy of the Diebold Opinion is attached as Exhibit A to the Supplemental Memorandum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 26th of August, 2008, I electronically filed the foregoing Motion for Leave to File Defendants' Supplemental Memorandum of Recent Authority in Support of Defendants' Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint for Violation of Federal Securities Laws with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed, via first class U.S. mail, postage prepaid, the document to the non-CM/ECF participants:

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